



POLICE DEPARTMENT

August 26, 2019

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Bobby Glover :

Tax Registry No. 934934 :

TRB Highway District :

Case No.

2018-18728

Police Officer Joseph Napolitano :

Tax Registry No. 952044 :

TRB Highway Unit #3 :

Case No.

2018-18731
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Hamilton Lee, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Michael Martinez, Esq.
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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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Respondents testified on their own behalf. A stenographic transcript of the trial record has been

prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondents Not Guilty.

ANALYSIS

It is undisputed that on the evening of May 10, 2017, Respondent Glover pulled over Individual 1 for speeding. Individual 1 attempted to show Respondent Glover miniature police shields. Respondent Glover refused to consider the mini shields, and Individual 1 initially delayed in giving him his license. Individual 1 began to use vulgar language and racial slurs. Respondent Glover issued him two summonses, for speeding and refusing to produce his license. Respondent Napolitano and other officers also arrived at the scene. Individual 1 emerged from his vehicle to question the summonses and yelled at the officers, who told him to return to his vehicle. Respondent Glover decided to arrest him, at which point Individual 1 was pulled from his vehicle. Respondent Glover used mace to subdue Individual 1, and Respondent Napolitano struck him twice. At issue is whether Respondent Glover had legal authority to discharge his pepper spray and arrest Individual 1, and whether Respondent Napolitano in fact punched Individual 1 in the face without legal authority.

CCRB Exhibit 2B, a transcript of the interview with Individual 1, was admitted into evidence. Individual 1 did not appear to testify at trial. His civil attorney advised counsel for CCRB that he was unable to testify. (Tr. 4) Individual 1 told investigators Arthur Albano and Sara Griffin that he was pulled over for a speeding ticket, tried to show the officer his uncle's mini shield and was told "it didn't mean anything." Individual 1 "cursed" and was written two tickets. He exited his car to ask what the "other ticket was for" and was "screamed at" to go back to his car. On his way back, he cursed again and officers approached. One grabbed his sleeve. Individual 1 added,

"Glover had a bottle of mace on my face. Asked me if I wanted to ride the lightning." Individual 1 further alleged that he was maced, punched in the eye and back of the head and slammed to the ground face first before being arrested. (CCRB Ex. 2B: 3-4, 9-11)

Individual 1 admitted that he had been driving 71 miles per hour and stated that he pulled over "right away" when the officers used their vehicle's lights and sirens. He speculated, "I think he wrote me the ticket because he was pissed off that I had to go get my license and stuff out of the trunk." He also admitted that he called Respondent Glover "a nigger, a four-eyed nigger, a jigaboo." He added, "He pissed me off, so I don't really care. At that point it's just words." He did not believe that Respondent Glover argued with him, but did claim that Respondent Glover had his hand on his gun while he was reaching for his license. (CCRB Ex. 2B: 4-8, 11-12)

Individual 1 also admitted that when the officers "screamed" at him to return to his car, he "cursed them." By the time he got back to his vehicle, he was dragged out of it. He told Respondent Glover, "I'm not going with you anywhere...you fucking nigger." He denied physically resisting or making any "threatening gestures." At that point, he was maced and punched in the eye and back of the head before being dragged out of the vehicle and slammed on the concrete. He did not see who punched him, because he had been maced. He estimated that five officers made contact with him. He complained to investigators that Respondent Glover excessively tightened the handcuffs around his wrists. Individual 1 asked to go to the hospital and Respondent Glover initially said no, although he was eventually brought there after asking multiple times. Respondent Glover told him that he was bringing him to Jamaica Hospital so that he would be treated by people of color. He fell twice getting into the ambulance. Later, at the precinct or hospital, Respondent Glover said that he had "tenure" and thus nothing adverse

would happen to him; he also told Individual 1 that he "didn't have freedom of speech." (CCRB Ex. 2B: 15-21, 27-31)

Respondent Glover testified that on May 10, 2017, he was in uniform conducting "enforcement on the local highways." He conducted a traffic stop of an individual named Individual 1, whom he first saw near Northbound Clearview Expressway and Union Turnpike. At that time, he was staying on the side of the roadway, observing traffic and looking for speeding vehicles. At around 2315 hours, he observed Individual 1's vehicle travelling "at a high rate of speed," which conclusion was based on his speed estimation training. Based on his estimation, Individual 1 was driving 70 miles per hour in a 50 mile per hour zone. Respondent Glover then used his laser set to determine the car's speed, which was estimated at 71 miles per hour, with an accuracy of "plus or minus one mile per hour." Respondent put his vehicle in drive to pursue Individual 1. (Tr. 23-26)

Respondent Glover needed to travel faster than Individual 1 to catch him, and eventually was positioned behind Individual 1's car, a black Honda. Individual 1 pulled over on the shoulder near traffic, with his car's wheels "right there" on the line dividing the shoulder from traffic. In Respondent Glover's experience, stops in such an area can be dangerous because "you could be struck by a vehicle at any point in time while you're out there in the roadway....I would have had to walk out in a lane of traffic in order to approach his vehicle." In fact, he did so to reach Individual 1's vehicle. He told Individual 1 that he pulled him over because he was exceeding the speed limit by 20 miles per hour. Individual 1 replied that he did not have his driver's license on him, but that it was in the trunk of his car. Respondent Glover and Individual 1 walked to the trunk, where Individual 1 removed "two mini shields." They were replicas of police shields. Respondent Glover asked if he had "a

card to go along with it." meaning a "PBA card," and Individual 1 said that he did not. (Tr. 26-30, 50-52)

Respondent Glover continued to ask for Individual 1's license, but he would not provide it, instead becoming irate. He told Respondent Glover that he would lose his job and be unable to pay his bills if he received a summons. Individual 1 affirmatively told Respondent Glover "no" when asked for his license. Respondent Glover decided to call for backup for the first time in his career after having made "well over a thousand" arrests for speeding, because "Mr. Individual 1 was extremely irate." Respondent Glover added, "it would only take a matter of seconds for him to push me into that lane of traffic. I was concerned for my safety at that point in time, especially with me asking for his license and him continuously refusing. At that point, I already knew anything I asked him to do, he was not going to do." Backup arrived after "thirty seconds to a minute." When backup arrived, Individual 1 asked whether Respondent Glover had "called [his] boys" and then produced his license; ultimately, it had taken "a few minutes," which Respondent Glover estimated was likely less than ten, for Individual 1 to produce his license from the moment he was first requested. Individual 1 went back to his vehicle, as Respondent Glover went to his patrol vehicle to fill out the summonses "for a few minutes" for speeding and disobeying a lawful order. The latter summons was issued because Individual 1 continually refused to provide Respondent Glover with his driver's license. (Tr. 30-34, 54-56)

Respondent Glover's vehicle was not equipped with video but another police vehicle's camera did record the stop. Respondent Glover walked to Individual 1's vehicle, gave him the summonses, told him that he had fifteen days to respond, and told him to drive safely. Respondent Glover returned to his vehicle, intending to let Individual 1 "go on his way." There were other officers there at the time, namely Respondent Napolitano as well as Police Officers Bistany

and Eskridge and Lieutenant Shum. Respondent Glover spoke to his colleagues about the basis for the summonses, at which point Individual 1 shouted, "Why did I receive two summonses?" He then approached the officers, who instructed him to return to his vehicle because he was "walking in a lane of traffic at that time." Respondent Glover worried that Individual 1 or one of the officers would be hit by a car. (Tr. 27, 33-37, 41)

Respondent Glover further testified that Individual 1 was instructed "over ten times" to get back in his car. Individual 1 was "extremely irate" and Respondent Glover decided that he needed to arrest him as he was refusing to comply with a lawful order. At the time when Respondent Glover decided to arrest him, Individual 1 began to say, "Fuck you, nigger. You're a jigaboo. You're a coon. You're a four-eyed monkey. Fuck you." As Respondent Glover and his colleagues were approaching Individual 1's car, he ran back inside the vehicle. Respondent Glover opened the car door and instructed him to get out of the vehicle. He then tried to pull Individual 1's arm. Individual 1 continued refusing to cooperate and calling Respondent Glover "nigger." Respondent Glover threatened to spray Individual 1 with mace, which elicited the same reply from Individual 1. (Tr. 37-38, 45, 57).

Respondent Glover then took out his mace and "spray[ed] one quick burst of mace in his face and pull[ed] him out...of the vehicle." Respondent Glover testified that he did so because Individual 1 was "extremely irate" and "a very large male," and because "he refused any lawful order." Respondent Glover admitted that he would avoid discharging pepper spray in a vehicle if he were inside of it, due to potential harm to himself, but denied that he was trained not to use pepper spray on people located inside vehicles. He knew that "there was no way that I could take [Individual 1] out physically, so I had to use the...next level of force, which was mace." He could not rely on his fellow officers to help pull Individual 1 from the car because "inside of the

vehicle, there's not enough space for all of us to go and drag him out of the vehicle." Once he had been sprayed, Individual 1 started screaming and tensed his spine to prevent the officers from placing him in handcuffs. Respondent Glover determined that they would need to remove him as quickly as possible because "we cannot have a long fight with someone resisting on a highway for a long period of time," adding that more time spent on the highway would result in more risk of being struck by a vehicle. (Tr. 38-39, 45-47)

Respondent Glover testified that he and his colleagues used the "minimum necessary" force, and denied that he punched or kicked Individual 1. He said, "I basically grabbed his arms and continuously tried to pull them...behind his back." Eventually, "numerous officers" brought Individual 1 to the ground, handcuffed him, and brought him to Respondent Glover's patrol vehicle. They searched him and then waited for a car with a partition to transport him to the 111 precinct, because Individual 1 was too large and irate to be transported in car without a partition. Respondent Glover met Individual 1 at the precinct, where it was determined that Individual 1 would need medical attention for the mace that was sprayed in his eyes. Individual 1 was told that he would be brought to Jamaica Hospital, which made him irate because he did not feel he would receive adequate care there. As Respondent Glover was helping him into the ambulance, Individual 1 fell backward and kept saying, "Fuck you, nigger." Respondent Glover accompanied Individual 1 to the hospital, where he remained irate despite being sedated and where he called two black nurses "niggers." Individual 1 later sued Respondent Glover. (Tr. 40-45)

On cross-examination, Respondent Glover admitted that he was the arresting officer and thus completed the arrest form, which listed the top charge as "resisting arrest" with underlying charges of "disorderly conduct/obscene language/gestures." He testified that there were no pedestrians in the vicinity of the stop. He also clarified that Individual 1 did not physically assault

him when he fell back onto him, but rather that Individual 1 was "throwing himself off of the ambulance" when he fell into him. Respondent Glover acknowledged that he filled out a form describing his use of force as "OC spray" and that he noted "defense of self" and "defense of others," but that he also listed the type of force used against himself as "none" and that he indicated he had no injuries. (Tr. 57-63) Respondent Glover also reviewed video of the encounter at trial. He acknowledged that "numerous officers" are visible around the car while Individual 1 is back in his vehicle. He also acknowledged that at the point when Individual 1 is being brought to the patrol vehicle in handcuffs, he is not resisting. He did not recall whether Individual 1 sustained an injury to his eye during the encounter with Respondents. However, he admitted that in Individual t's "mug shot," a sizable black and blue spot was visible near his left eye. (Tr. 63-71)

Respondent Napolitano testified that on May 10, 2017, he was working with a partner, Officer Ryan Eskridge. They were in an SUV and Respondent Napolitano was the recorder. A call came over the radio asking for an additional unit on the Clearview Expressway at the LIE. He and Eskridge "wanted to get over there as fast as we could." They arrived after no more than "a couple of minutes." Respondent Glover was in his car when they arrived. Eskridge parked the vehicle, with its lights on, "splitting the shoulder and the right lane" to protect the lane, which is "highly-used." Two other officers and a lieutenant responded as well. By the time they arrived, Respondent Glover had already gotten Individual t's license so they stood near Respondent Glover's car and "backed him up" by coming to the passenger's vehicle "to make sure the motorist had calmed down." They never engaged Individual 1 and determined that he was free to go. However, Individual 1 opened his door and began yelling about the summonses. (Tr. 75-80)

Individual t eventually exited his vehicle. Respondent Napolitano estimated that he weighed 300 pounds and was six feet tall. He described Individual t as "borderline irate.... upset....

[and] yelling." Individual I was "using a lot of racial slurs" and Respondents told him to get back in his car. They also waved their hands at him to signal him towards his car. Respondents worried that Individual I could be struck by passing vehicles, because he began to stray into the exit lane. Respondents approached Individual I and Respondent Napolitano saw Respondent Glover take out his handcuffs to make an arrest, because Individual I was "being disorderly and not listening." Individual I re-entered his vehicle and Respondent Glover opened the door and told him to exit. At the time, Respondent Napolitano was inside the driver's area. Individual I was still irate and not listening. Respondents pulled at him and he resisted by holding onto the steering wheel. Respondent Napolitano feared that Respondents could "fall over into the lane of traffic." He was also concerned because they did not know what Individual I had inside the car which could have posed a danger to them. (Tr. 81-85)

Respondent Napolitano testified that he then heard Respondent Glover tell Individual I once, "I'm going to pepper spray you." Respondent Glover used the pepper spray and then after "maybe another second," Respondents got Individual I to exit the vehicle. Both Respondents had their hands on him to assist him with exiting the vehicle, and had been pulling on him before Respondent Glover used the pepper spray. Once out of the car, Individual I continued to resist by tensing up and pulling his arms away. Respondent Napolitano was trying to handcuff him. Respondent Napolitano testified, "We kept pulling back and forth. At one point I gave two strikes to the back of his shoulder, and then he pulled the arm away. So then I had my flashlight in my hand, dropped it, hugged his arm, pulled, and we went to the floor." They were standing in the right lane of traffic and Respondent Napolitano feared that he would be run over because "we're having a brawl in the middle of the highway." (Tr. 85-87)

Respondent Napolitano had his flashlight in his hand because it was dark outside. He was holding the flashlight as he was taught in the academy: it was away from his body and the face of the flashlight was in the bottom of his hand. When he struck Individual 1, he hit him with the bottom of his palm, not with the flashlight, using the technique taught in the academy. He hit Individual 1 twice in the top of the shoulder. He denied that the flashlight ever struck Individual 1, and only conceded that "maybe the lens portion" would have made contact with Individual 1. He also denied that he ever punched Individual 1 in the face or brandished his flashlight like a club to beat Individual 1. He eventually dropped his flashlight due to Individual 1's pulling away his arm. He then "bear hugged" Individual 1's arm; he and Respondent Glover were able to get Individual 1's arms behind his back. Respondents used force to place Individual 1 on the ground, where he was handcuffed. He was then brought to the car, where Respondents waited with him for the partition car to arrive. Respondent Napolitano had no further contact with Individual 1 until he was informed of a lawsuit. (Tr. 87-94)

On cross-examination, Respondent Napolitano acknowledged that in his Threat, Resistance or Injury Worksheet, he noted that Individual 1 was injured and that he had used force in self-defense and defense of others, while also writing that he himself had not been injured. He was shown the picture of Holden's black eye and denied that Individual 1 looked that way after the incident. He did not recall whether Individual 1 had the black eye when he first met him. Respondent Napolitano acknowledged that, based on the video evidence, twenty seconds elapsed from the point when Individual 1 was instructed to return to his vehicle to the time when Individual 1 re-entered his vehicle. He also conceded that at the 7:09 point in the video, he appeared to bring his hand down on Individual 1 while he was "on his way to the ground." (Tr. 95-102)

CCRB Exhibit 3B, a transcript of the interview with Police Officer Jordan Bistany, was admitted into evidence. Bistany told investigators Sara Griffin and Owen Godshall that on May 10, 2017, he was working with Police Officer Minutolo when they received a call asking for an additional unit, with screaming audible in the background. By the time they arrived, they were told that it was "pretty much over" and that Individual 1 had been refusing to give his license to Respondent Glover. While they were waiting, Respondent Glover told them that Individual 1 had called him "the N word several times." Individual 1 then emerged from his car and was "very irate," asking what the summonses were for and further using racial epithets. He was instructed to return to his vehicle because he and the officers were on the side of the highway. Individual 1 returned to his vehicle and Respondent Glover approached to arrest him. Bistany told Individual 1 to exit his vehicle again, and Individual 1 again used racial epithets before being maced and pulled from the car by Respondents. Bistany held his knee over Individual 1's head to prevent him from getting up; he also helped with handcuffing him. Individual 1 resisted by flailing his arms, trying to stand and refusing to put his hands behind his back. Once he was stood up and brought to the patrol vehicle, he complained that he was struggling to breathe, due to the mace. The officers waited for a partition car because Individual 1 was "being out of control [and] aggressive." Bistany admitted that Individual 1 did not engage in any threatening physical conduct. He denied that Individual 1 was hit with a flashlight and he denied hearing "do you want to ride the lightning?" He did admit seeing Respondent Napolitano make a fist at one point. (CCRB Ex. 3B: 5-9, 12-18, 24-26)

Individual 1's hospital records from Jamaica Hospital Medical Center were also entered into evidence as CCRB Exhibit 7. The document notes that Individual 1 was complaining of lower back pain and had an abrasion on the left side of his face. The "history of present illness" states in part that the patient "is non-compliant with giving history and keeps stating it was police

brutality and yelling that he has head injuries and not receiving medical attention.” The document further notes that Individual 1 was “aggressive/agitated and non-compliant, disruptive to other patients in the area.” Finally, it is written in multiple locations that Individual 1 was “aggressive” and “combative” and that he thus needed to be sedated. (CCRB Ex. 7)

CCRB Exhibit 1, a video of the incident, shows Individual 1 standing by the side of the road after exiting his car. Cars can be seen driving by at a high rate of speed. Officers approach him and he re-enters his vehicle. (6:30-6:45). Next, with multiple officers surrounding Individual 1, he is dragged from the car. One officer¹ slams his hand down on Individual 1 twice in quick succession. The officer seems to have an object in his hand, but it is unclear if he is hitting Individual 1 with the object per se. Once he is wrestled to the ground, Individual 1 is turned over and officers grab his arms to put him in handcuffs. His face appears to be pressed into the ground to some degree. (7:00-8:18). (CCRB Ex. 1) CCRB Exhibit 4, a mugshot pedigree for Individual 1, shows bruising to his left eye. (CCRB Ex. 4)

Respondent Glover’s Specifications 1 and 2 charge him with wrongfully using pepper spray and doing so in the confines of an automobile. Patrol Guide Section 221-07 requires at least active resistance in order for an officer to use pepper spray against an individual. I credit the testimony of Respondents that they had to pull on Individual 1 to remove him from the vehicle before Respondent Glover pepper sprayed him. I do not credit Individual 1’s hearsay statements; hearsay is inherently less reliable and Individual 1 demonstrated clear bias with his unrepentant use of racial slurs. The video also supports the sequence of events as described by Respondents. Therefore, Respondent Glover had lawful authority to discharge the pepper spray to subdue

¹ During his testimony, Respondent Napolitano acknowledged that it was he who struck Individual 1.

Individual 1. Regarding the use of pepper spray within the confines of the vehicle, Section 221-07 instructs MOS, "*Avoid* using O.C. pepper spray in small contained areas such as automobiles and closets" (emphasis added), but does not say that doing so is prohibited. In contrast, earlier in the same section, the Patrol Guide does say, "*Do not* use O.C. pepper spray on subjects who passively resist" (emphasis added). Thus, if the Patrol Guide's authors intended to impose a blanket prohibition on using pepper spray in contained spaces, they would have written "do not" as they did earlier in the paragraph. Due to Individual 1's vehement refusal to cooperate, his physical resistance, his large size, and Respondents' position next to fast-moving vehicle traffic, Respondent Glover could not reasonably avoid escalating the level of force. Respondent Glover was not acting in contravention of the Patrol Guide. Accordingly, I find Respondent Glover Not Guilty of Specifications 1 and 2.

Respondent Glover's Specification 3 charges him with arresting Individual 1 without legal authority. Individual 1 was arrested for disorderly conduct, according to the arrest paperwork. I credit Respondents' testimony that officers feared for their safety in the event that they were to remain on the side of the road with an irate, approximately 300-pound man. Contrary to CCRB's argument at trial (Tr. 119-120) that there was no disorderly conduct because there were no bystanders who could have formed a crowd, Penal Law § 240.20 does not require stationary bystanders but rather deals generally with the possibility of "public inconvenience, annoyance or alarm." The road was a public highway and motorists were driving by, thus Individual 1's shouting absolutely created a risk of public inconvenience. Indeed, it is noteworthy that even hospital workers found Individual 1 to be so uncooperative that they sedated him. Respondent Glover had legal authority to arrest Individual 1 under the totality of the circumstances. Accordingly, I find Respondent Glover Not Guilty of Specification 3.

Respondent Napolitano's Specification I charges him with striking Individual I in the face without sufficient legal authority. The video and Respondent Napolitano's own testimony demonstrate that he did indeed strike Holden twice. I credit Napolitano's testimony that his strikes were to Holden's body area and not his face. Due to Individual I's active resistance and the risk posed by the aforementioned vehicle traffic, Respondent Napolitano had authority to strike Holden in order to subdue him, and his actions and level of force used were not unreasonable in the situation. The mere fact that Individual I presented at the hospital with a facial abrasion does not prove he was struck in the face. The video, trial testimony, and IAB interviews with Holden and Police Officer Bistany demonstrate that Individual I was on the ground and resisting during the officers' attempts to handcuff him and he also fell when he was getting into the ambulance.

Either of these events could easily account for an abrasion. Accordingly, I find Respondent Napolitano Not Guilty of Specification I.

Respectfully submitted,

 KM

Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

NOV 20 2019

JAMES P. O'NEILL
POLICE COMMISSIONER